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Attorneys for Plaintiff Fireman's Fund  
Insurance Company

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

FIREMAN'S FUND INSURANCE  
COMPANY, a corporation,

Plaintiff,

v.

JOHN BERRY, an individual; KATHLEEN  
SEBELIUS in her capacity as Secretary of  
Health and Human Services, United States of  
America,

Defendants.

Case No.: 2:11-cv-1029-LDG-CWH

AND RELATED COUNTERCLAIM.

**STIPULATION AND ORDER FOR DISBURSEMENT OF FUNDS, DISMISSAL OF  
COUNTER-CLAIM AND CLOSURE OF CASE**

Plaintiff and counterdefendant Fireman's Fund Insurance Company, defendant and  
counterclaimant John Berry and defendant Kathleen Sebelius in her capacity as Secretary of  
Health and Human Services, United States of America, stipulate as follows:

1           1.       The funds currently on deposit in the Registry of the Court, including all interest  
2 earned on those funds while on deposit, shall be disbursed as follows:

3                   (a)       To the Center for Medicare Services on behalf of the United States of  
4 America, the sum of \$15,456.40. The Clerk's check shall be made payable to "United States  
5 Department of Justice."

6                   (b)       To defendant and counterclaimant John Berry, \$461,408.79 plus all  
7 interest earned. The Clerk's check shall be made payable to "John Berry and Ganz & Hauf, his  
8 attorneys."

9           2.       The counterclaim of John Berry filed July 18, 2011 (Docket #8) shall be  
10 dismissed with prejudice, with each party to bear its own fees and costs.

11           3.       Pursuant to 28 U.S.C. § 2361, plaintiff Fireman's Fund Insurance Company is  
12 discharged from further liability to defendants John Berry and Kathleen Sebelius for the  
13 payment of any portion of the Judgment in Case No. A-06-526936-C in the Eighth Judicial  
14 District Court of the State of Nevada for Clark County entitled "*John Berry v. Moshe Elazar, et*  
15 *al.*" This discharge from liability shall not extend to any extra-contractual claims presently held  
16 by non-party Moshe Elazar, nor to any claims which defendant John Berry may later acquire as  
17 assignee of Moshe Elazar or by execution upon Moshe Elazar.

18           4.       It is the intention of the parties to this Stipulation that nothing in it or shall extend  
19 to any extra-contractual claims presently held by non-party Moshe Elazar, nor to any claims  
20 which defendant John Berry may later acquire as assignee of Moshe Elazar or by execution  
21 upon Moshe Elazar.

22           5.       Berry, shall no later than ten court days after disbursement pursuant to paragraph  
23 1(b), file an Acknowledgement of Partial Satisfaction of Judgment in an amount equal to the full  
24 amount disbursed pursuant to paragraphs 1(a) and 1(b) in Case No. A-06-526936-C in the  
25 Eighth Judicial District Court of the State of Nevada, for Clark County, entitled "*John Berry v.*  
26 *Moshe Elazar, et al.*" The court will retain jurisdiction for purposes of enforcing Berry's  
27 obligation to file that Acknowledgement of Partial Satisfaction of Judgment.  
28

1 DATED: September 28, 2011

2 BULLIVANT HOUSER BAILEY PC

3  
4 By /s/ Andrew B. Downs

5 Andrew B. Downs  
6 Nevada Bar No. 8052  
Kristol Bradley Ginapp  
Nevada Bar No. 8468

7 Attorneys for Plaintiff and Counterdefendant  
8 Fireman's Fund Insurance Company

9 DATED: September 28, 2011

10 GANZ & HAUF

11  
12 By /s/ Marjorie Hauf (by e-mail authorization)

13 Adam Ganz  
14 Nevada Bar No. 6650  
Marjorie Hauf  
15 Nevada Bar No. 8111  
Ida M. Ybarra  
Nevada Bar No. 11327

16 Attorneys for Defendant and Counterclaimant John  
17 Berry

18 DATED: September 28, 2011

19 DANIEL G. BOGDEN  
20 United States Attorney, District of Nevada  
21 ROGER W. WENTHE  
Assistant United States Attorney

22  
23 By /s/ Roger W. Wenthe (by e-mail authorization)

24 Roger W. Wenthe  
Nevada Bar No. 8920

25 Attorneys for Defendant Kathleen Sebelius

26 **ORDER**

27 The parties having stipulated and good cause appearing,  
28

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1 IT IS HEREBY ORDERED that the Clerk of the Court shall disburse the funds on  
2 deposit in the Court's Registry (Docket # 11) including all interest earned on those funds as  
3 follows:

4 (a) To the United States Department of Justice on behalf of defendant  
5 Kathleen Sebelius, the sum of \$15,456.40.

6 (b) To John Berry and Ganz & Hauf, his attorneys, the sum of \$461,408.79  
7 plus all interest earned while those funds were on deposit.

8 IT IS FURTHER ORDERED that plaintiff Fireman's Fund Insurance Company is  
9 discharged from further liability to defendants John Berry and Kathleen Sebelius for the  
10 payment of any portion of the Judgment in Case No. A-06-526936-C in the Eighth Judicial  
11 District Court of the State of Nevada for Clark County entitled "*John Berry v. Moshe Elazar, et*  
12 *al.*" This discharge from liability shall not extend to any extra-contractual claims presently held  
13 by non-party Moshe Elazar, nor to any claims which defendant John Berry may later acquire as  
14 assignee of Moshe Elazar or by execution upon Moshe Elazar.

15 The Court retains and reserves jurisdiction over the parties for purposes of enforcing  
16 Berry's obligation to file that Acknowledgement of Partial Satisfaction of Judgment in the  
17 underlying state court action.

18 The Clerk is directed to close this matter.

19 DATED: 29 Sept 2011

20  
21   
22 United States District Judge

23 13548267.1

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